

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-45537-RJK
Chapter 7

Troy Gayle MacFarland,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Terri A. Georgen-Running, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Bank, N.A., a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **2:00 pm** on **Thursday, November 4, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than Monday, November 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, October 26, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Bank, N.A. seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on October 1, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Bank, N.A. holds a valid, perfected interest in a 2001 Dodge Quad Cab, vehicle identification number 1B7MF33771J579266 (the "Vehicle").

7. Copies of Wells Fargo Bank, N.A.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Bank, N.A.'s interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of June through September 2004 totaling \$1,904.92 plus late charges, have not been made by the Debtor(s). Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$25,115.29 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$15,500.00.

10. Wells Fargo Bank, N.A.'s interest is depreciating, while Debtor(s) are failing to make payments. Wells Fargo Bank, N.A. does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Wells Fargo Bank, N.A. with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Bank, N.A. to relief from the stay.

12. Wells Fargo Bank, N.A. requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, B. Burnett, or some other representative of Movant, will testify on behalf of Wells Fargo Bank, N.A..

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Bank, N.A. will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Bank, N.A. respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Wells Fargo Bank, N.A. to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: October 13, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 7 Case

In re:

Bky. No. 04-45537-RJK

Troy Gayle Macfarland,

Affidavit

Debtor(s).

I, Beth Burnett, of Wells Fargo Bank, N.A., declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. Wells Fargo Bank, N.A. has a security interest in the following (the "Collateral"):
01 dodge quad Cab 1B7MF33771J579266.
2. \$25,115.29 is the outstanding balance under the contract.
3. \$1,904.92 is the amount of the existing delinquency under the contract.
4. \$15,500.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

Further your affiant sayeth not.

Dated: 10/12/20

Beth Burnett

Beth Burnett
Bankruptcy Specialist
Wells Fargo Bank, N.A.

Subscribed and sworn to before me on October
12, 2004

Jennifer Hartman
Notary



WELLS FARGO BANK

TROY G MACFARLAND

Matthew AUG 08 2003

Transportation Installment Loan And Security Agreement

6530834882

FOR VALUE RECEIVED, you the undersigned ("Borrower") promise to pay to the order of Wells Fargo Bank Nevada, N.A. ("the Bank") at the address designated on your statement, in lawful money of the United States of America, the principal sum of \$28,127.00 with interest each day on all unpaid principal from the date this loan is funded until paid at the rate of 8.75 % per year (computed on the basis of a 365-day year, actual days elapsed).

Principal and interest shall be payable on the 17 TH calendar day of each month in installments of \$ 478.23 each, commencing on 08/17/03 and continuing up to and including 07/17/09 upon which date all principal and interest remaining unpaid shall be immediately due and payable. Each payment, made in full and on time, shall be credited first to interest then due, and the remainder to principal. Payments that are late or partial shall be allocated at Bank's discretion. The holder hereof reserves the right to add to the first payment the interest due from the date this loan is funded to the date which is one month before the first monthly payment is due. If a payment is made by mail, it shall not be considered to have been made until the remittance is actually received at the designated address.

If any payment is not received within ten (10) days of when it becomes due, you promise to pay a late charge of \$29.00.

You have the right to pay this loan in full at any time before the final payment is due. If you make a partial prepayment, there will not be any change in the amount of your monthly payments or delays in the due dates of those payments unless the holder of this Agreement has so agreed in writing. As security for payment and performance of all obligations under this Agreement, and extensions and renewals thereof, you grant the Bank a security interest in the property specified below ("Collateral"). This includes all additions to and replacements and proceeds thereof including insurance proceeds. The Collateral is currently located at 6890 188TH AVE SE BECKER MN 55308B707

		COLLATERAL		SERIAL OR I.D.#
NEW/USED	YR. MODEL	MAKE/TRADE NAME	MODEL	
U	2001	DODGE	3500 QUAD CAB	187M324771078288 187M333713579266

NOTICE TO CONSUMER: THIS IS A CONSUMER CREDIT TRANSACTION

I understand that:

- I should not sign this agreement before I read the writing on all pages, even if otherwise advised.
- I should not sign this if it contains any blank spaces.
- I am entitled to an exact copy of this and any other agreement that I sign.
- I have the right to prepay this unpaid balance due under this agreement at any time without penalty, and I may be entitled to receive a refund of unearned charges in accordance with the law.

My signature below acknowledges that I have read and agree to the entire agreement including the attached Transportation Installment Loan and Security Agreement - Additional Terms and the Truth in Lending Disclosure, both of which are made part of this agreement. I acknowledge the grant of a security interest and will provide all documents and information necessary to insure that Wells Fargo Bank Nevada, N.A., is named first lien holder on the above referenced collateral. I further acknowledge receipt of a copy of this agreement.

(X) Troy G MacFarland
TROY G MACFARLAND

July 25, 2003
(Date)

X

(Date)

TRUTH IN LENDING DISCLOSURE STATEMENT

"ANNUAL PERCENTAGE RATE" The cost of your credit as a yearly rate.		"FINANCE CHARGE" The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you on your behalf	Total Of Payments The amount you will have paid after you have made all payments as scheduled.*
8.01 %		\$ 7,879.68	\$ 28,406.00	\$ 34,288.68
Your Payment Schedule Will Be:			Additional Information: See the rest of this agreement for more information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refund. Late Charges: If any payment is not received within ten (10) days of when it becomes due, you promise to pay a late charge of \$29.00. Prepayment: If you pay off early, you will not have to pay a penalty. Insurance: You may obtain casualty insurance from anyone you want who is acceptable to Wells Fargo Bank. Credit life insurance and disability insurance are not required to obtain credit and will not be provided unless you agree to pay the additional cost.	
Number of Payments	Amount of Payments *	When Payments are Due		
72	478.23	Monthly Beginning 08/17/03		
*Asterisk Means Estimate			You have the right to receive an itemization of the Amount Financed. I want an itemization	

Lienholder for this account is Wells Fargo Bank Nevada, N.A., P.O. Box 31537, Billings, MT 59107
20031828400243 P-L-AUTO-PROM-M-MT (08/2003)

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
 DRIVER & VEHICLE SERVICES DIVISION
 445 MINNESOTA ST., ST. PAUL, MN 55101
 CONFESSION OF LIEN INSPECTION - DEBTOR NAME AND ADDRESS

MACFARLAND TROY GAYLE
 MACFARLAND MICHELLE LYN
 9686 168TH AVE
 BECKER MN 55308

Print Class
 U.S. Postage
PAID
 Permit No. 171
 St. Paul, MN

YAK7019

1ST SECURED PARTY

LIEN HOLDER

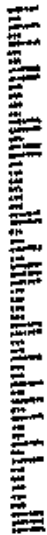
Year	01	DOB	4CRPC	H0700S298	This NR
Make	1B7MF33771J579266	Model	07/24/03	NO	Security Data
VIN					

RETAIN THIS DOCUMENT - See reverse
 side of this form for removing this lien.

WELLS FARGO BANK MN NA
 200 33RD AVE S
 SAINT CLOUD MN 56301-3715

6630834692

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-45537-RJK
Chapter 7

Troy Gayle MacFarland,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Wells Fargo Bank, N.A. submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Bank, N.A. holds a perfected interest in a 2001 Dodge Quad Cab with a vehicle identification number 1B7MF33771J579266 (the "Vehicle"). Payments due under the terms of the Contract for the months of June through September 2004 totaling \$1,904.92 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$25,115.29 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$15,500.00. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Wells Fargo Bank, N.A. has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Bank, N.A. to relief from the stay. United Savings Assn. of

Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$25,115.29 as of the date hereof. The fair market value of the Vehicle is approximately \$15,500.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, Wells Fargo Bank, N.A. is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: October 13, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Troy Gayle MacFarland

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-45537-RJK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
Wesley W. Scott
Schmidt & Lund
13 S. 7th Ave.
St. Cloud, MN 56301

(Trustee)
Terri A. Georgen-Running
PO Box 16355
St. Paul, MN 55116

(Debtor(s))
Troy Gayle MacFarland
9686 168th Ave.
Becker, MN 55308

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: October 13, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-45537-RJK
Chapter 7

Troy Gayle MacFarland,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Thursday, November 4, 2004 on the motion of Wells Fargo Bank, N.A. seeking relief from the automatic stay of 11 U.S.C. §362. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Bank, N.A. to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Wells Fargo Bank, N.A., and Wells Fargo Bank, N.A. is authorized to foreclose its interest in the subject 2001 Dodge Quad Cab, vehicle identification number 1B7MF33771J579266 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Robert J. Kressel
United States Bankruptcy Judge